

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

H.C.P.No.364 of 2019

K.Ajima

.. Petitioner

Vs.

1.The Superintendent of Police
Vellore District – 632 009.

2.The Inspector of Police,
Gudiyatham Town Police Station
Gudiyatham
Vellore District – 632 602.

3.The Inspector of Police
All Women Police Station
Gudiyatham
Vellore District – 632 602.

4.A.Magesh

[R4 impleaded vide order dated 05.3.2019 in
Crl.MP.No.3251 of 2019 in HCP.No.364/2019]

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus directing the respondents herein to produce the daughter of the petitioner, detenue herein namely K.Ayesha Sidhika, aged about 25 years before this Court and set her at liberty forthwith.

For Petitioner .. Mr.J.Prakasam

For Respondents .. Mr.C.Iyyapparaj
Additional Public Prosecutor [R1 to R3]

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J)

The petitioner is the mother of the detenue named K.Ayesha Sidhika, who is aged about 24 years [05.08.1994]. According to the petitioner, the detenue is her only daughter, aged about 25 years and she has studied upto X standard. The detenue is stated to have left her home at about 6.15 p.m. on 24.01.2019, informing the petitioner that she is going for a purchase to the nearby shop, but she did not return till 10.00 p.m. The petitioner along with her relatives made a thorough search and also enquired with their friends and relatives, but they could not find/trace out her daughter and apprehending danger to her life, as well as concerned about her well-being, she lodged a complaint on the file of the second respondent on 25.01.2019, and upon receipt of the complaint, the second respondent has assigned a petition No.43/2019.

2. It is further stated by the petitioner that on 03.02.2019, to her shock and surprise, she became aware of the fact that the fourth respondent had kidnapped her daughter. It is the specific allegation of the petitioner that in respect of their property, a civil case is pending before Sub Court, Gudiyatham and the fourth respondent, who is aged about 45 years, has been engaged as a lawyer in the said case and on this pretext, he used to visit the house of the petitioner and taking advantage of it, he brainwashed the detenue and kidnapped her, and despite the complaint given against him discloses a commission of cognizable offence, only a petition number has been assigned by

the third respondent, and the third respondent police did not take any action on

the fourth respondent and therefore, for the purpose of securing the custody of the detainee, the present Habeas Corpus Petition is filed.

3. The learned counsel appearing for the petitioner would submit that the fourth respondent is a practising lawyer, belonging to Advocate Bar Association, Gudiyatham and admitted that he is conducting the civil case on behalf of the petitioner and in utter disregard and violation of ethical and professional standards, he brainwashed the detainee, who had studied only upto X standard and kidnapped her. Since the detainee had studied only upto X standard and hailing from a conservative muslim family, she was not aware of the consequences of their illegal relationship with the fourth respondent and taking into consideration the interest, welfare, well-being and future career of the detainee, her custody may be handed over to the petitioner, who is her mother and prays for appropriate orders.

4. Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 to 3 would submit that based on the complaint given by the petitioner, CSR came to be registered and it was enquired into and the statement of the detainee was also recorded and it would disclose that she went with the fourth respondent on her own accord. It is also brought to the knowledge of this Court that the wife of the fourth respondent, viz., Mrs.Kalpana has also lodged a complaint against her husband, the fourth respondent, before the second respondent-police and it has been taken on file in petition No.334/2018.

5. Mr.A.Magesh, the fourth respondent personally remained present before this Court and admitted that he is a practising advocate, belongs to Guidyatham Bar Association, but however denies the allegations levelled against him in the affidavit filed in support of this petition and he would further state that the marriage with his wife Kalpana is still subsisting and out of their wedlock, two children are born and both the children are under the care and custody of her wife Kalpana and he further states that he has also instituted family proceedings against his wife, seeking divorce, before the Court of Subordinate Judge, Gudiyatham, on the ground of cruelty etc., and it is yet to be numbered.

6. This Court put a specific question to the fourth respondent as to whether he had married the detainee. He replied, no marriage was solemnised between him and the detainee, for the reason that his marriage with her wife Kalpana is still subsisting and as and when, he gets divorce from her wife, he would marry the detainee. It is also stated by the fourth respondent that as on today, the detainee is under his care and custody and he would definitely take care of the detainee's well being and also assures safety to the detainee.

7. The detainee, who is also present before this Court has also been enquired into and she would state that she is in love with the fourth respondent and only on her own volition, she went along with the fourth respondent.

8. This Court also put up a question to the detainee, as to whether she

is aware of the consequences of eloping with a man who had already got married

and who is 20 years elder than her. The detenue responded that since she is in love with him, she was prepared and ready to face the consequences.

9. This Court has considered the rival submissions and as well the statement made by the detenue and the fourth respondent.

10. This Court also enquired the petitioner as well as the brother of the detenue, who are present before this Court and they would state that the fourth respondent by playing black magic, has brainwashed the detenue, and in fact they have already made arrangements for the marriage of the detenue among their community and at that juncture, the fourth respondent has illegally taken away the detenue and due to this adverse incident, they are put to social stigma and boycott and hence, the mother of the detenue prays for immediate custody of the detenue.

11. Admittedly the detenue is a major and *prima facie* it appears that the detenue on her will and volition only, had went away with the fourth respondent. No doubt, the difference of age between the detenue and the fourth respondent is 20 years, but the detenue has taken a decision on her own choice and therefore, in the present scenario, this Court is not competent to give a finding as to the nature, validity and legality of such relationship. It is also vehemently contended by the learned counsel appearing for the petitioner that the fourth respondent is equally guilty of violating the professional ethics and standards as well as the noble object of his profession as a lawyer and here again, this Court is not inclined to make any comments for the reason that it is

for the petitioner and other aggrieved persons, if any, to initiate appropriate proceedings in this regard, before the competent forum.

12. The learned Additional Public Prosecutor also undertakes to conduct enquiry in both the above petitions pending before the second respondent pertaining to this matter , in a fair, proper and impartial manner and the said submission is placed on record.

13. In the result, this Habeas Corpus Petition is closed, granting liberty to the petitioner to initiate appropriate proceedings before the competent forum in accordance in law, against the persons concerned with whom she is having grievance, pertaining to the present case.

[M.S.N, J.] [M.N.K., J.]
05.03.2019

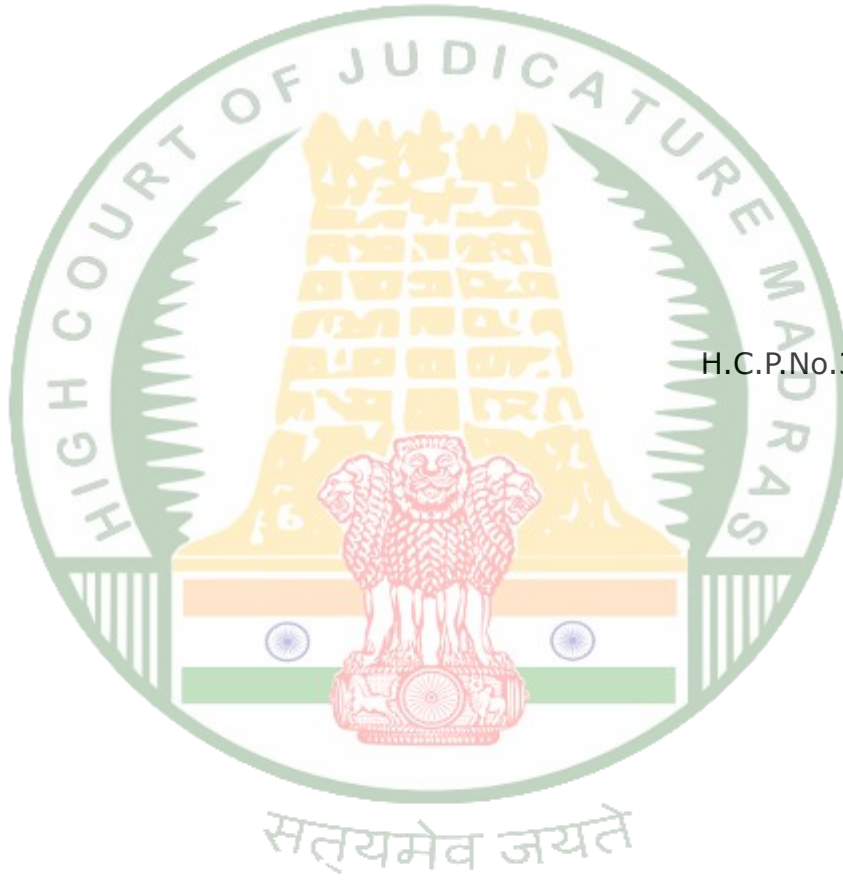
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Index : Yes/No
Internet : Yes/No

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High Court, Madras.

M.SATHYANARAYANAN, J.,
AND
M.NIRMAL KUMAR, J.,
ds



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